

## **E-AUTHENTICATION INTEROPERABILITY LAB SERVICES AGREEMENT**

This E-Authentication Interoperability Lab Services Agreement ("Agreement") is by and between \_\_\_\_\_ (hereinafter "Applicant"), and **U.S. General Services Administration E-Authentication Program Management Office**. (hereinafter "E-Auth PMO").

WHEREAS, the United States General Services Administration ("GSA"), has undertaken the E-Authentication Initiative, to facilitate citizen and business access to E-Government transactions with enhanced trust and confidence, by establishing an infrastructure and policy foundation for authentication services;

WHEREAS, the ability of components from differing authentication technologies to interoperate with one another will be critical to the success of the E-Authentication Initiative;

WHEREAS, the E-Authentication Initiative has established the E-Authentication Interoperability Lab (the "Lab") to analyze, test and certify the interoperability of products and systems that desire to participate in the E-Authentication Initiative;

WHEREAS, E-Auth PMO's designated Lab Manager is responsible for overall operation of the Lab, and oversees analyzes and tests the interoperability of products and systems, and validates conformance to the E-Authentication Interface Specifications;

WHEREAS, Applicant wishes to participate in the E-Authentication Initiative; and wishes to submit its software product ("Product") to the Lab for analysis, testing, and certification, upon the terms and conditions set forth in this agreement;

WHEREAS, E-Auth PMO wishes to accept Applicant's Product, upon the terms and conditions set forth in this agreement;

WHEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties hereto agree as follows:

### **1. ANALYSIS, TESTING AND CERTIFICATION**

1.1 Applicant wishes to submit its Product to the Lab for analysis, testing and certification, and shall pay such application fees, if any, and comply with such rules, regulations, procedures, and requests as E-Auth PMO may prescribe, from time to time.

1.2 Certification. If Lab Manager's analysis and testing demonstrates that Applicant's Product complies with the E-Authentication Interface Specifications, as revised from time to time, then Lab Manager shall so certify, and shall submit the name and version of Applicant's Product to the E-Authentication Program Management Executive for addition to GSA's Approved E-Authentication Technology Provider List.

Submission of a product for testing does not guarantee that the product will successfully complete the testing process. Furthermore, if said Product is added to the Approved E-Authentication Technology Provider List, this shall not be considered an endorsement by the Government, nor shall there be any guarantees that said Product shall be purchased for use by the Government.

1.3 Noncompliance with procedures. Applicant agrees that if Applicant or its representatives, or Applicant's Product, in Lab Manager's sole judgment, is or are not complying with any rules or procedures set forth in this Agreement or established by Lab Manager from time to time, then Lab Manager may decline to accept Applicant's product for analysis and testing, or may suspend analysis and testing of Applicant's Product, without refund of any fees paid by Applicant, until Applicant complies, or until assurances of compliance satisfactory to Lab Manager are received, as Lab Manager may determine in its reasonable discretion.

- 1.4 (a) "Commercially available off-the-shelf item (COTS)" shall mean a product of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, that has been sold, leased, or licensed in substantial quantities, and that is offered to the Government without modification, in the same form as to non-governmental customers.
- (b) Applicant represents and warrants that (a) it has sufficient right, title and interest in and to the Product to submit it to the Lab; and (b) that the Product meets the definition of "commercially available off-the-shelf item," or that it is an unreleased for general availability version of a Product that Applicant has a good faith expectation that when released upon the conclusion of development will qualify as such.
- 1.5 Applicant certifies and warrants that the name of the Product being submitted is \_\_\_\_\_, a <specify COTS product or beta version>, whose version, service pack, and patch release numbers are \_\_\_\_\_.

## 2. **GRANT OF LICENSE**

- 2.1 Applicant grants to E-Auth PMO an irrevocable, perpetual, license to use the Product, solely for the purposes of this Agreement, without right to grant sublicenses. This license permits Lab Manager and any authorized contractors to make any number of copies, and to use the Product on any number of machines, for the permitted purposes. This license permits E-Auth PMO to retain any Product submitted to the Lab in accordance with this Agreement in perpetuity. This perpetual license shall be used solely for the analysis, testing and certification of the interoperability of the Products that desire to participate in the E-Authentication Initiative and shall only be used inside the E-Authentication Interoperability Lab or on systems necessary to test the interoperability of said Product. If Product fails to meet the compatibility testing process, and at vendor's request, then the Lab Manager shall return to the vendor or destroy all copies of the submitted Product and documentation.

## 3. **CONFIDENTIALITY**

- 3.1 "Confidential Information" shall mean (a) the fact of Applicant's application to the Lab, the identity of the Product submitted, and the results of the analysis, testing and certification (other than listing on GSA's Approved E-Authentication Technology Provider List), and (b) any source code, algorithms or other technical information relating to the Product, whether or not protected by a patent or copyright, that Applicant provides orally or in writing to E-Auth PMO pursuant to this Agreement.
- 3.2 E-Auth PMO shall (a) not provide or make available the Confidential Information in any form to any person other than those employees or contractors who have a need to know consistent with the authorized use of such Confidential Information; (b) not reproduce the Confidential Information except for use reasonably necessary to the performance of this Agreement; and (c) not exploit or use the Confidential Information for any purpose other than as required for the performance of its obligations pursuant to this Agreement.
- 3.3 Information disclosed by Applicant to E-Auth PMO shall not be "Confidential Information" if it:
- (a) Was in the public domain prior to its receipt by E-Auth PMO, or has subsequently become part of the public domain without E-Auth PMO's breach of this Agreement or wrongful act; or
- (b) Was in E-Auth PMO's possession or known to E-Auth PMO prior to its receipt; or
- (c) Was received by E-Auth PMO from a third party without obligation of secrecy, and was not acquired directly or indirectly from Applicant; or

- (d) Was independently developed by E-Auth PMO without use of, access or reference to, nor any benefit of Applicant's Confidential Information.
- 3.4 In the event that a subpoena or other legal process in any way concerning Confidential Information is served upon E-Auth PMO, E-Auth PMO shall notify Applicant as soon as possible and shall cooperate with Applicant in any lawful effort by Applicant to contest or limit the disclosures.
- 3.5 In the event Applicant, by virtue of the presence of its representatives in the Lab, or otherwise from E-Auth PMO, or from any employee, officer, director, or agent of E-Auth PMO or the Lab, learns whether any other applicant has applied for certification for any of its product, or learns any information whatsoever relating to any such other applicant, including but not limited to whether any product of any other applicant have or have not been analyzed, tested or certified, or the results of any such analysis, testing or certification, or learns nonpublic information about the Lab's analysis, testing or procedures, then Applicant shall not disclose any such information to any other person, nor shall Applicant use such information for any purpose whatsoever, including but not limited to being prohibited from using it for the commercial advantage of Applicant or for the commercial detriment of any other person. The prohibition upon Applicant imposed by this paragraph shall inure to the benefit of any such other applicant, which shall have the right to enforce its terms against Applicant and/or to seek remedies for any violations thereof.
- 3.6 The prohibition in the preceding paragraph shall not apply to any information learned by Applicant if it was in the public domain prior to its receipt by Applicant, or has subsequently become part of the public domain without Applicant's breach of this Agreement or wrongful act.
4. **LIMITATION OF LIABILITY**
- 4.1 NEITHER E-Auth PMO NOR ANY OF ITS EMPLOYEES, AGENTS OR AFFILIATES SHALL BE LIABLE TO APPLICANT FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO COMPENSATORY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, LOSS OF ANTICIPATED PROFITS, LOSS OF USE OF FACILITIES, OR LOSS OF DATA, RESULTING FROM ITS PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF ANY OF THEM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
5. **INDEMNITY**
- 5.1 Applicant shall defend or settle at its expense any claim, suit or proceeding brought against Lab Manager, or any employee, officer, director, or agent of E-Auth PMO (a) arising from or alleging infringement, misappropriation or other violation of any intellectual property right of any third party by E-Auth PMO relating to Product furnished under this Agreement, or (b) arising from or relating to any certification made, or any failure to certify, any Product furnished under this Agreement.. Applicant shall indemnify and hold Lab Manager, or any employee, agent or affiliate of E-Auth PMO, or the successors and permitted assigns of any of them (individually each an "Indemnitee" and collectively the "Indemnitees") harmless from and against and pay any and all losses, costs and damages, including royalties and license fees, and reasonable counsel fees, attributable to any such claim, suit or proceeding. Any Indemnitee shall have the right to approve the terms of any settlement or compromise that may impose any unindemnified or nonmonetary liability upon such Indemnitee.
6. **GOVERNING LAW AND DISPUTE RESOLUTION**
- 6.1 The law of federal Government contracts, as expressed in statutes, regulations, and decisions of courts and administrative tribunals, and to the extent necessary, the laws of the District of Columbia shall govern the interpretation and construction of this Agreement.
- 6.2 Any controversy or claim between the parties arising from or relating to this Agreement shall be settled by the federal or Superior courts of Washington, District of Columbia, to the subject matter and personal jurisdiction of which the parties irrevocably submit; provided however, that no party

shall initiate any action (other than an action for emergency relief for an actual or threatened violation of § 6 of this Agreement, unless the party initiating an action shall first have submitted a written demand for relief to the other party, and that thirty (30) calendar days shall have passed, during which time the party seeking relief shall consult in good faith with the other party, which consultation shall include at least either:

- (a) One face-to-face meeting or telephone consultation between principals of each party having authority to resolve the dispute, or
  - (b) Reasonable efforts to arrange such consultation, if declined by the opposite party.
- 6.3 In any judicial proceedings relating to or arising from this Agreement, E-Auth PMO, if the substantially prevailing party, shall recover its expenses of the proceeding, including its reasonable attorneys' fees, from the substantially non-prevailing party.

7. **MISCELLANEOUS**

- 7.1 **Assignment.** Applicant may assign its rights and obligations under this Agreement only pursuant to merger or acquisition of substantially all of the assets of Applicant, upon submission of information satisfactory in form and substance to E-Auth PMO. E-Auth PMO may assign its rights and obligations under this Agreement pursuant to merger or acquisition of substantially all of its assets, or to GSA, NIST or to any successor manager of the Lab.
- 7.2 **Entire Agreement.** This Agreement constitutes the entire and complete understanding between the parties and supersedes all prior and contemporaneous verbal and written agreements, communications and representations relating to the subject matter hereof. Its terms can be modified only by an instrument in writing signed by both parties.
- 7.3 **No Waiver.** Any waiver of any breach of any provisions of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions hereof.
- 7.4 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall be modified to the extent possible to preserve the original intentions of the parties, and the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 7.5 **Notices.** Notices and other communications hereunder shall be in writing and shall be deemed delivered on the date of hand delivery; or on the date of receipt during normal business hours by facsimile transmission or by commercial courier service (FedEx, UPS, etc.), all fees prepaid. Notices shall be sent to the addresses and/or facsimile numbers set forth at the end of this Agreement, or to such other addresses and/or facsimile numbers as either party shall have notified to the opposite party in accordance with this section.

IN WITNESS WHEREOF, the parties have executed, or caused to be executed by their duly authorized representatives, this Agreement as of \_\_\_\_\_, 200\_.

[APPLICANT]

**US General Services Administration  
E-Authentication Program Management Office  
1099 14<sup>th</sup> Street NW  
Suite 2600 East Tower  
Washington, DC 20005-3419  
Facsimile number: 202-208-0833**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_